

DOCKET NO.: 9520-002-64

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: Michael G. NATHANS, et al. ART UNIT: 3691
SERIAL NO.: 09/924,971 EXAMINER: Muriel S. Tinkler
FILING DATE: August 9, 2001
FOR: NATIONAL HOUSING CREDIT REPOSITORY PROTOCOLS

PRE-APPEAL BRIEF REQUEST FOR REVIEW

COMMISSIONER FOR PATENTS
PO BOX 1450
ALEXANDRIA, VA 22313-1450

SIR:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

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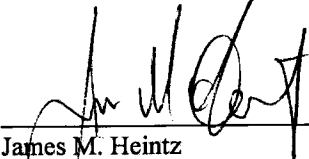
- ☐ applicant/inventor.
☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
☒ attorney or agent of record.
Registration No.: 41,828
☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*

☒ *Total of 5 forms are submitted.

Respectfully submitted,

DLA PIPER US LLP



James M. Heintz
Registration No. 41,828

500 Eighth Street, N.W.
Washington, D.C. 20004
Telephone No. 202.799.4000
Facsimile No. 202.799.5000

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IN RE APPLICATION OF: Michael G. NATHANS, et al. ART UNIT: 3691
SERIAL NO.: 09/924,971 EXAMINER: Muriel S. Tinkler
CONFIRMATION NO.: 3150
FILING DATE: August 9, 2001
FOR: NATIONAL HOUSING CREDIT REPOSITORY PROTOCOLS

PRE-APPEAL BRIEF REQUEST FOR REVIEW

COMMISSIONER FOR PATENTS
PO BOX 1450
ALEXANDRIA, VA 22313-1450

SIR:

Applicants hereby request, pursuant to the pilot program described at 1296 Off. Gaz. 67 (July 12, 2005, as extended on January 11, 2006), pre-appeal brief review of the outstanding rejection of claims 1-8 and 18-20.

Claim 1 is directed toward a system for collecting and distributing credit information. The claim includes specific requirements for both (i) the type of credit information that is collected and distributed, and (2) the conditions under which the credit information is collected and distributed. In particular, claim 1 limits the type of credit data: to “residential housing credit payment data pertaining to a plurality of consumers and a plurality of payees . . . the residential housing credit payment data including an amount paid and a date on which the amount was paid.” Furthermore, claim 1 limits the conditions under which the data is collected - the data must be collected “from a payment processor” and must be distributed to “a third party” and only when a “corresponding authorization from the particular consumer” is provided. The third party

is neither the payee nor the payor nor an entity associated with the system. Neither Walker nor Weatherly, nor the combination thereof, discloses these limitations.

The office action relies on Walker at col. 8, lines 28-26. Walker is directed toward a system that is designed to help a lending institution determine whether to grant an application for credit. The cited passage of Walker recites that “an applicant’s good credit experience, monthly income and monthly debt payments (incorporating estimated monthly payment data associated with the newly created debt) are systematically evaluated upon transmission of the credit request . . . This process uses monthly credit bureau information, including mortgage payments”. As was discussed in the previous response by applicants, the “monthly debt payments” and “mortgage payments” recited in that passage refer to payments that must be made by the applicant in the future, not to past payment data. This point has apparently been conceded by the examiner, as the “Response to Arguments” section on page 2 of the Final Office Action includes an emphasis on “good credit experience,” indicating an intention to rely on that portion of the passage rather than the aforementioned “monthly debt payments” and “mortgage payments.”

The “good credit experience” recitation of Walker refers to credit bureau information (Walker at col. 8, line 35). As discussed in the previous response, credit bureau information typically does not include “an amount paid and a date on which the amount was paid.” Moreover, the credit bureau information is not collected “from a payment processor.” The Final Office Action attempts to cure these deficiencies through reliance on Weatherly. Unlike Walker, which is directed toward a system used by a lending institution such as a bank to determine whether to grant an application for credit, Weatherly refers to a system that is used by an intermediary that collects and guarantees lease payments by a lessee to a landlord (Weatherly at col. 1, lines 45-58). The Final Office Action relies on the passage at col. 2, lines 20-29, which

discloses that the intermediary monitors lease payment activity in order to perform its guaranty obligations to the lessor. Weatherly, however, does not disclose the reporting of payment data to any third party. At best, assuming *arguendo* that a payment to a lessor by the intermediary in satisfaction of its guaranty obligations (as discussed at col. 2, lines 38-39) could be considered reporting of a payment, such information does not include an amount paid and a date on which the payment was made *by the consumer* because in this case the consumer has failed to make any payment, and the payment information is not reported to a third party because it is the lessor (which corresponds to the payee of claim 1) to whom the payment was made.

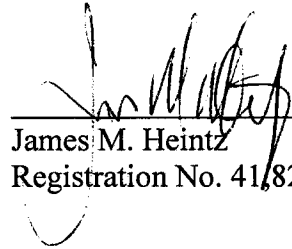
Thus, the most that Weatherly discloses is the storing (not reporting) of data by a payment processor (the intermediary). As discussed above, there is no disclosure of the reporting of any payment information to any third party, and certainly not any disclosure of reporting such payment information to a third party when the consumer authorizes such reporting as required by claim 1. Applicants note that the Office Action asserts at page 4 that Weatherly discloses “obtaining approval from the lessee on page 2 and lines 20-29.” The “approval” referred to in this passage of Weatherly is the lessee’s approval of a lease, there is no discussion in Weatherly of any “approval” by the consumer of reporting payment information to a third party as required by claim 1.

Walker’s system likewise fails to cure the aforementioned deficiencies in Weatherly because Walker’s system does not disclose any information to any third party – the system is run by a bank, and the only disclosure the bank makes is to the consumer, not a third party. Moreover, the information “reported” to the consumer by Walker’s system is not payment data but rather an indication of whether the consumer’s application has been accepted.

For the foregoing reasons, the rejection of claim 1 should be withdrawn. Claims 2-8 and 18-20 depend from claim 1 and therefore define patentable subject matter for at least the reasons discussed above. Accordingly, these rejections should be withdrawn as well.

Respectfully submitted,

DLA PIPER US LLP



James M. Heintz
Registration No. 41,828

500 Eighth Street, N.W.
Washington, D.C. 20004
Telephone No. 202.799.4000
Facsimile No. 202.799.5000